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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,679	12/19/2001	Gilbert Patrick	P045 1051	6565

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EXAMINER

HURLEY, SHAUN R

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8C

**Office Action Summary**

Application No.

10/025,679

Applicant(s)

PATRICK, GILBERT

Examiner

Shaun R Hurley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5,6,7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 23 is objected to because of the following informalities:

The term “bundles” should read --bundle-- Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2, 5, 6, 14, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 2 and 14, it is unclear what Applicant is attempting to claim. How many yarns are present? One, two, three? Independent claims 1 and 3 claim one yarn, yet claims 2 and 14 claim two yarns. Is this two additional yarns, or is the original one yarn now two yarns? If the latter is true, the independent claim does not allow for plural yarns. One yarn cannot become two

In regards to claims 5 and 23, it is unclear what Applicant is attempting to claim. Is this a yarn or a composite? Independent claims 1 and 3 claim one yarn, yet claims 5 and 23 claim a composite of a yarn and web. The independent claims are drawn to a yarn, and do not allow for a web composite.

In regards to claim 6, what is meant by “enhanced abrasive properties”? Is this improved abrasion resistance, or is this improved abrasion means?

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6, 9, and 13-22, to the degree definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Toon (5287690).

Toon teaches a ring (Column 5, line 41) core-spun yarn (Figure 2) needled (Column 6, lines 26-32) substantially through a centerline of the yarn wherein the core and sheath have different material properties including liquid absorption and abrasion resistance (Column 4, lines 56-66). Toon also teaches two differing yarns being needled together (Column 5, lines 36-43).

6. Claims 1-4, 6, and 13-22, to the degree definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Hall et al (3208125).

Hall teaches a core-spun yarn (Column 3, lines 34-36) needled substantially through a centerline of the yarn (Figure 5) wherein the core and sheath have different material properties including liquid absorption and abrasion resistance (Column 3, lines 30-33). Hall also teaches two differing yarns being needled together (Figure 5).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7, 8, and 10-12 rejected under 35 U.S.C. 103(a) as being unpatentable over Toon in view of Hatch's Textile Science.

Toon essentially teaches the invention as discussed above, but fails to specifically teach Dref, open-end, vortex, and worsted spinning. Hatch teaches that all are well known core spun yarns (Page 304, second full paragraph). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to utilize any of the myriad of spinning methods to create the core spun yarn of Toon. Toon states that any suitable means may be used to create the core-spun yarn (Column 5, lines 29-35), and since Hatch teaches that all are well known methods of creating a core spun yarn, it would have been obvious to do so.

9. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Hatch's Textile Science.

Hall essentially teaches the invention as discussed above, but fails to specifically teach Dref, open-end, vortex, and worsted spinning. Hatch teaches that all are well known core spun yarns. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to utilize any of the myriad of spinning methods to create the core spun yarn of Hall. Hall teaches a core spun yarn may be utilized, and core spun yarns can be made by numerous methods. Since Hatch teaches that all are well known methods of creating a core spun yarn, it would have been obvious to do so.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

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F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1, 13, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6311375.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the method of Patrick '375 teaches a method of creating a needled core-spun yarn whose patentability is based on specific yarn properties which obviously read upon those of the instant application.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fehrer (2002/0038499), Groh et al (6114262), Fink et al (5081753), Bird (4674271) all teach what is well known in the art.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shaun R Hurley whose telephone number is (703) 605-1236. The examiner can normally be reached on Mon - Fri, 7:00am - 4:00pm, off every other Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on (703) 305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-085.

SRH

June 5, 2003



JOHN J. CALVERT  
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